

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

PEDRO M. VAN RHYN SOLER

Debtor(s)

MULTINATIONAL LIFE INSURANCE
COMPANY

Plaintiff

v.

PEDRO M. VAN RHYN SOLER

Defendant

CASE NO. 14-10211 (MCF)

Chapter 7

ADVERSARY CASE: 17-00270 (MCF)

OPINION AND ORDER

For a second time, the Plaintiff, Multinational Life Insurance Company, challenges Defendant, Pedro Van Rhyn's, discharge order. Its previous attempt, a complaint objecting to the discharge, was unsuccessful, and dismissed as late. Now, in an eleventh-hour attempt to prevail, it seeks to revoke the discharge order.

The Plaintiff argues that the Defendant's discharge should be revoked because he obtained it through fraud by acquiring property of the estate and failing to report it to the trustee. On the other hand, the Defendant counters that the Plaintiff had knowledge of all alleged underlying facts prior to the bankruptcy petition and to entry of the discharge order; and thus, the discharge order may not be revoked.

After reviewing the two cross motions for summary judgment and hearing the parties' arguments, the court grants the

1 Defendant's summary judgment motion and denies the Plaintiff's
2 summary judgment motion. The court agrees that the Plaintiff had
3 knowledge of the Defendant's actions prior to the entry of the
4 discharge order. As such, it is estopped from revoking the
5 discharge. The Plaintiff was late again in pursuing its remedies
6 and therefore, cannot prevail now.

7 In the instant case, a review of the undisputed facts,
8 procedural history and case law show that the Plaintiff is not
9 entitled to the extraordinary remedy of revoking the Defendant's
10 discharge.

11 **I. UNDISPUTED FACTS AND PROCEDURAL HISTORY**

12 We find it necessary to meticulously recount the undisputed
13 facts and the relevant procedural history of the legal and
14 adversary cases:

15 1. Between 2004 and 2012, the Defendant and his brother,
16 Edgardo Van Rhyn, were co-owners of Option Health Care
17 Network, Inc. Exhibit I Docket No. 128-1, at 1-2.

18 2. Option was a third-party administrator of National Life
19 Insurance Company (NALIC). Exhibit III Docket No. 127-1, at
20 7.

21 3. On or about April 2006, Option signed a service agreement
22 contract with NALIC. Exhibit I Docket No. 128-1, at 3.

23 4. In 2012, the Plaintiff purchased NALIC.

24 5. After conducting an internal audit of the company, the
Plaintiff became aware that Option officials including the
Defendant detoured sums of monies from Option accounts to

1 personal bank accounts for the years 2006 to 2011.
2 Transactions from corporate accounts to personal accounts
3 resulted in payments to themselves and cash withdrawals.
4 EXHIBIT III of Docket No. 127-1 at 6-9.

5 6. On March 5, 2012, the Plaintiff filed before the local
6 court the case Multinational Life Insurance Company v. Option
7 Health Care Network Inc., Pedro Van Rhyn, et al., Case No.
8 KAC 2012-0212, to collect monies, pierce the corporate veil,
9 damages, and breach of obligations for the Defendant's
10 actions as president and owner of Option.

11 7. On August 1, 2012, the Plaintiff alerted the Federal Bureau
12 of Investigation (FBI) through its attorney, Erik Rosado,
13 Esq., of a scheme perpetrated by the Defendant and his brother
14 through Option. It shared information with federal agents
15 regarding bank account transactions, bank account logs, and
16 company information belonging to the Defendant and his
17 brother, where they suspected the governmental funds were
18 being funneled to personal bank accounts. Exhibit I of Docket
19 No. 127-1 at 1-3.

20 8. On February 8, 2013, the Plaintiff through its Director-
21 Auditor, Guillermo Somoza, Esq., and its attorney, Erik
22 Rosado, Esq., voluntarily provided the Internal Revenue
23 Services (IRS) with information regarding a possible
24 fraudulent scheme that they encountered while auditing the
Plaintiff's purchase from NALIC. The scheme stemmed from
transfer of corporate funds to personal accounts by Option
officials resulting in cash withdrawals. EXHIBITS XI & XII,
Docket No. 127-1 at 54-58.

9. On November 4, 2013, Erik Rosado was interviewed at the

1 Internal Revenue Office in San Juan, Puerto Rico, by the FBI
2 and IRS Special Agents. He communicated to the authorities
3 that the Plaintiff had knowledge that the Defendant was using
4 funds from Option to pay a personal credit card. He stated
5 that this credit card was used to conduct numerous personal
6 transactions which included the purchase of jet fuel,
7 clothing, and gifts to employees of Option. Exhibit II of
8 Docket No. 127-1 at 5.

9 10. On December 13, 2014, the Defendant filed for bankruptcy
10 under Chapter 7 of the Bankruptcy Code. Case No. 14-10211 at
11 Docket No. 1.

12 11. On the following day, the deadline to object to the
13 discharge was set to March 16, 2015. Case No. 14-10211, Docket
14 No. 5.

15 13. The Clerk notified these deadlines to the creditors and
16 parties in interest, including the Plaintiff. Case No. 14-
17 10211 at Docket No. 9.

18 14. On March 3, 2015, the United States trustee requested an
19 extension of time to file a motion to dismiss or an objection
20 to discharge. Case No. 14-10211 at Docket No. 31.

21 15. The next day, the bankruptcy court granted until June 15,
22 2015, to file a motion to dismiss or an objection to discharge.
23 Case No. 14-10211 at Docket No. 32.

24 16. On March 23, 2015, the Plaintiff filed a notice of
appearance and a motion requesting an extension of time to
object to the discharge. Case No. 14-10211 at Docket Nos. 43-
44.

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2 17. On March 24, 2015, the bankruptcy court denied the
3 Plaintiff's motion seeking an extension of time to file an
4 objection to discharge for failure to comply with PR LBR
5 9013(c), which requires initial motions to include notice
language. Case No. 14-10211 at Docket No. 45.

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7 18. On March 30, 2015, the Plaintiff refiled an extension of
8 time to object to the discharge. Case No. 14-10211 at Docket
No. 53.

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10 19. The next day the bankruptcy court once again denied the
11 Plaintiff's extension for failure to comply with PR LBR
9013(c). Case No. 14-10211 at Docket No. 54.

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13 20. Fifteen days later, a new counsel appeared on behalf of
the Plaintiff. Case No. 14-10211 at Docket No. 56.

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15 21. On that same day, the Plaintiff filed Proof of Claim No.
16 17 in the amount of thirteen million dollars
(\$13,000,000.00). The claim stems from the Plaintiff's
17 allegations in the case of Multinational Life Insurance
18 Company v. Option Health Care Network Inc. Pedro Van Rhyn, et
al., Case No. KAC 2012-0212.

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20 22. A month later, on July 16, 2015, the Plaintiff filed an
21 adversary proceeding against the Defendant to object to his
discharge. Adversary Proceeding No. 15-00181.

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23 23. On August 11, 2015, the Defendant filed a motion to
24 dismiss, alleging that the complaint was filed after the
deadline to file objections to discharge. Adversary
Proceeding No. 15-00181 at Docket No. 11.

24. On October 14, 2015, the Plaintiff opposed the dismissal motion. Adversary Proceeding No. 15-00181 at Docket No. 25.

25. On February 6, 2016, while the motion to dismiss was pending before the court, the Plaintiff filed a motion for leave to file an amended complaint, alleging that it discovered new facts, new corporations, and undisclosed facts that are essential to the causes of action. Adversary Proceeding No. 15-00181 at Docket No. 40. The amended complaint was filed simultaneously with the motion requesting leave. Id. at Docket No. 41.

26. On March 10, 2016, the court dismissed the objection to the discharge action for failure to file the adversary complaint within the statutory deadline for objecting to the discharge. Adversary Proceeding No. 15-00181 at Docket No. 47.

27. On October 12, 2016, the Defendant was granted a discharge order, pursuant to 11 U.S.C. § 727. Case No. 14-10211 at Docket No. 136.

28. Six weeks later, the Defendant was indicted by the U.S. Department of Justice at the United States District Court for the District of Puerto Rico. Criminal Case No. 16-742-ADC.

29. On September 27, 2017, the United States Bankruptcy Court for the District of Puerto Rico issued General Order #17-05 extending all periods set by statutes of limitations applicable to causes of action, cases, and proceedings, filed or to be filed in the Court, until November 6, 2017, after the passing of Hurricane Maria through Puerto Rico.

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2 30. On November 6, 2017, the Plaintiff filed the instant
3 complaint for revocation of discharge order, alleging that
4 the Defendant obtained the discharge through fraud and on
5 grounds, pursuant to 11 U.S.C. § 727(d)(1)-(d)(2) and Fed. R,
6 Bankr. P. 7001(4). Adversary Proceeding No. 17-00270 at
7 Docket No. 1.

8 31. On February 14, 2019, the Defendant and the U.S. Attorney
9 filed a Plea Agreement in the criminal case no. 19-111, in
10 which the Defendant pled guilty of conspiracy to defraud
11 against the United States under 18 U.S.C. § 371. Adversary
12 Proceeding No. 17-00270 at Docket No. 128-1, Exhibit III at
13 14-27.

14 32. In the Plea Agreement, the Defendant stipulated as fact
15 that the purpose of the scheme was for him and his brother to
16 enrich themselves by not revealing to the Commonwealth of
17 Puerto Rico income in the amount of \$181,337.39, and the non-
18 payment of taxes on personal expenses charged to Option's
19 AMEX credit card in the years 2010, 2011, and 2012. The
20 Defendant and his brother knowingly concealed, and disguised
21 personal expenses paid with the company's AMEX. Adversary
22 Proceeding No. 17-00270 at Docket No. 128-1, Exhibit III at
23 25.

24 33. A month after the plea agreement, on March 13, 2019, the
25 Defendant filed an Amended Statement of Financial Affairs.
26 Bankruptcy Case No. 14-10211 at Docket No. 180.

27 34. On July 29, 2019, the Defendant filed a motion submitting
28 the amended tax returns for tax years 2010, 2011, and 2012,
29 containing an aggregate unpaid tax debt of \$28,804.00 in

income. Adv. Proc. No. 17-00270 at Docket No. 75.

35. On November 17, 2020, the legal and adversary cases were reassigned to the undersigned judge. Adversary Proceeding No. 17-00270 at Docket No. 125.

II. LEGAL STANDARD

Summary judgment is available if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; Borges ex rel. S.M.B.W. v. Serrano-Isern, 605 F.3d 1, 4 (1st Cir. 2010).

When both parties move for summary judgment, each party must carry its own burden of proof as the moving party in its cross motions and as the nonmoving party in response to the other party's motion. Wells Real Estate Inv. Trust II, Inc., 615 F.3d 45, 51 (1st Cir. 2010). If there are no disputed material facts, only one party is entitled to judgment as a matter of law. Encanto Rests., Inc. v. Aquino Vidal (In re Cousins Int'l Food Corp.), 553 B.R. 197, 205 (Bankr. D.P.R. 2016).

This matter is appropriate for summary judgment disposition as there are no material facts in dispute and it is a matter of law. In re Colarusso, 382 F.3d 51 (1st Cir. 2004) (citing Celotex, 477 U.S. at 322-323); Vega-Rodriguez v. Puerto Rico Tel. Co., 110 F.3d 174, 178 (1st Cir. 1997).

III. PARTIES' CONTENTIONS

The Plaintiff seeks to revoke the discharge order under

1 section 727(d)(1) or (d)(2) of the Bankruptcy Code.¹ The Plaintiff
2 states that the discharge was obtained through fraud and that it
3 did not know of the fraud until after the entry of the discharge
4 order; therefore, the discharge order must be revoked under §
5 727(d)(1). The Plaintiff also argues that the discharge may be
6 revoked because the Defendant failed to report the acquisition of
or entitlement of property to the chapter 7 trustee under §
727(d)(2).

7 The Defendant, on the other hand, claims that the Plaintiff
8 is not entitled to revoke the discharge under § 727(d)(1) because
9 it knew of the Defendant's activities prior to the entry of
10 discharge. The Defendant contends that revocation of the discharge
11 under § 727(d)(2) is not warranted because the Plaintiff has failed
12 to specify the property of the estate, which the Defendant
13 allegedly failed to report fraudulently in the bankruptcy
14 schedules.

14 IV. LEGAL ANALYSIS

15 The Plaintiff's summary judgment cannot be granted under
16 either § 727(d)(1) or § 727(d)(2). Under § 727(d)(1), the Plaintiff
17 cannot convince the court to revoke the discharge order when it
18 had pre-discharge knowledge of the facts that led to the
19 Defendant's indictment. Furthermore, the eventual guilty plea deal
20 that occurred two years after the entry of discharge cannot be
21 raised to revoke the discharge. It is undisputed that the Plaintiff
22 had knowledge of the Defendant's fraudulent actions at least two
23 years prior to the filing of the bankruptcy petition. The
24 Plaintiff bases his complaint on a federal indictment of the
Defendant that was filed one month after the entry of the

¹ Unless expressly stated otherwise, all references to "Bankruptcy Code" or to specific statutory sections are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101-1532.

1 discharge. This indictment was the result of the Plaintiff's
2 cooperation with federal authorities. The court notes that this
3 revocation of discharge action appears to be a collateral attack
4 on the ruling dismissing its previous complaint objecting to the
5 discharge.

6 Under § 727(d)(2), the Plaintiff is unable to revoke the
7 discharge order because there was no property to be hidden or
8 delivered to the trustee and even if there was such hidden
9 property, pre-discharge knowledge of the Defendant's wrongdoing
10 bars the Plaintiff from prevailing in the instant action. We
11 address these points.

12 A. Section 727(d)(1)

13 Section 727(d)(1) states that the court shall revoke a
14 discharge if "such discharge was obtained through the fraud of the
15 debtor, and the requesting party did not know of such fraud until
16 after the granting of such discharge." 11 U.S.C. § 727(d)(1). The
17 time to bring a revocation for fraud is limited to one-year.
18 Section 727(e)(1) states that "a creditor ... may request a
19 revocation of discharge - (1) under subsection (d)(1) of this
20 section within one year after such discharge is granted."
21 "Revocation of a discharge is an extraordinary remedy, which should
22 be construed liberally in favor of the debtor." In re Green, 2014
23 WL 3953470 at *6 (B.A.P. 1st Cir. August 6, 2014).

24 To prevail under Section 727(d)(1), the Plaintiff must
establish by a preponderance of the evidence that: (1)
the debtor obtained the discharge through fraud; (2)
the creditor possessed no knowledge of the debtor's
fraud prior to the granting of the discharge; and (3)
the fraud, if known, would have resulted in the denial
of the discharge under section 727(a) of the Bankruptcy
Code. As for the first element, the plaintiff must
demonstrate that the debtor committed actual fraud
involving an intentional wrong, such as the intentional
omission of assets from the debtor's schedules. The
third element also incorporates a standard of actual

1 fraud, such that a court would have denied a debtor's
2 discharge under section 727(a) of the Bankruptcy Code
3 had the fraud been known. In this way, the third element
4 subsumes the first to the extent that an analysis of
5 the third element inherently requires the same analysis
6 of whether the debtor committed fraud in fact.

7 Multinational v. Van Rhyn, Adv. Proc. 17-00270, Docket No. 86 at
8 4 (Bankr. D.P.R., Oct. 31, 2019) (citing Yules v. Gillis (In re
9 Gillis), 403 B.R. 137, 144 (B.A.P. 1st Cir. 2009)).

10 The present revocation action fails for two reasons. First,
11 the Plaintiff became aware of the Defendant's fraudulent
12 activities two years before the filing of the bankruptcy petition.
13 The Defendant shared this knowledge with the federal authorities
14 in 2012, prior to the bankruptcy filing, and the result was that
15 the Defendant's 2016 indictment and eventual conviction in 2019
16 after he entered into a guilty plea agreement. Second, the
17 knowledge of the guilty plea agreement did not occur within the 1-
18 year period after entry of discharge. Because we find that the
19 Plaintiff does not comply with the second prong of section
20 727(d)(1) regarding lack of knowledge, the court centers its
21 attention on this factor and will not discuss the merits of the
22 remaining prongs.

23 i. Pre-discharge Knowledge

24 The Defendant filed for bankruptcy in 2014. Two years before,
in 2012, the Plaintiff purchased NALIC, and after conducting an
internal audit of the company it became aware that the Defendant
detoured sums of monies from Option to personal bank accounts for
the years 2006 to 2011. These transactions constituted payments
and cash withdrawals from corporate accounts to personal accounts.
The Plaintiff alerted the FBI of the scheme perpetrated by the
Defendant and shared information with federal agents.

In 2013, the Plaintiff also contacted the IRS and provided it
information about the Defendant funneling monies from corporate

1 accounts to his personal accounts. Several months later, the
2 Plaintiff's attorney was interviewed by the FBI and IRS Special
3 Agents. He again communicated to these authorities that the
4 Defendant was using funds from Option to pay a personal credit
5 card. He further stated that this credit card was used to conduct
6 numerous personal transactions which included the purchase of jet
7 fuel, clothing, and gifts to employees of Option. A year after the
8 interview, the Defendant filed for chapter 7.

9 Exhibits I, II, III, V, VI, X, XI & XII of the Defendant's
10 motion for summary judgment demonstrate that the Plaintiff was
11 aware of the Defendant's use of the corporate credit card for
12 personal expenses and transfer of corporate funds to personal bank
13 accounts, two years prior to the filing of the bankruptcy case. As
14 stated above, the Plaintiff reported it to the federal authorities
15 in 2012. Two years later, the Plaintiff learned during the
16 discovery process in the local court case that Option's corporate
17 Amex credit card was being used for personal expenses by the
18 Defendant. These fraudulent activities resulted in guilty plea
19 agreement in 2019. Thus, the Plaintiff was aware of the Defendant's
20 fraudulent activities before the bankruptcy petition was filed.

21 ii. Untimely Objection to Discharge Complaint

22 The Plaintiff filed an untimely objection to the discharge
23 based on the fraudulent activities discovered in the audit. The
24 deadline to file an objection to discharge was March 16, 2015. The
25 Clerk's Office notified this deadline to the Plaintiff along with
26 the other creditors in the case. The court extended the deadline
27 to June 15, 2015, per the request of the U.S. trustee. The
28 Plaintiff filed the complaint eight days after the extended
29 deadline afforded to the U.S. trustee expired.

30 The Plaintiff then requested leave to file an amended
31 complaint after it discovered new facts, new corporations, and
32 undisclosed facts that it described as essential to the causes of

1 action it was pursuing. The amended complaint described the alleged
2 scheme perpetrated by the Defendant to conceal his assets. The
3 bankruptcy court dismissed the action because it was filed after
4 the deadline to object to discharge expired. In the dismissal
5 order, the bankruptcy court reasoned that the Plaintiff failed to
6 make an assertion that its knowledge of the facts giving rise to
7 the alleged fraud were formed between the day that the deadline to
8 file an objection to discharge expired and the day when it filed
9 its complaint.

10 iii. Post-Discharge Knowledge

11 Because the Plaintiff did not timely raise its objection to
12 the discharge, it now seeks to revoke the discharge order as a
13 collateral attack with the present adversary proceeding. The
14 Defendant's discharge was entered on October 12, 2016, pursuant to
15 11 U.S.C. § 727. For purposes of 11 U.S.C. § 727(d)(1), the
16 Plaintiff can only use knowledge of fraud that came to its
17 attention from October 12, 2016 until October 12, 2017. We note
18 that the court extended deadlines for filing causes of action until
19 November 6, 2017, upon the passing of Hurricane Maria, pursuant to
20 General Order #17-05. Due to the one year after the discharge
21 statutory requirement, the Plaintiff is barred from using evidence
22 or knowledge obtained after November 6, 2017.

23 Within the 1-year period after the entry of the discharge
24 order, the Plaintiff learned that the Defendant was indicted by
the U.S. Department of Justice. The federal indictment contained
one count of health care fraud and two counts of money laundering.
The Defendant was the President of Option, the corporation that
acted as the third-party administrator of Plaintiff's predecessor,
NALIC. According to the prosecuting authorities, "the scheme and
artifice to defraud" employed by the Defendant was to incur in
large amounts of personal and non-business related expenditures on
Option's corporate credit card and misused funds received from the

1 Puerto Rico Treasury Department for healthcare expenses, resulting
2 in the Plaintiff (Multinational Life Insurance Company) having to
3 pay more than \$4,000,000 to healthcare providers with outstanding
4 debts owed by Option as a result of the fraudulent scheme. The
5 court is of the view that the underlying facts contained in the
6 indictment were not new to the Plaintiff because it alerted the
7 federal authorities of the criminal activities and cooperated with
8 the investigation two years before the filing of bankruptcy
9 petition.

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iv. Post-Revocation Complaint

After filing the adversary action to revoke the discharge
order, the Plaintiff contends that the Defendant plead guilty for
defrauding the Puerto Rico Treasury Department and that he filed
an Amended Statement of Financial Affairs. The Plaintiff argues
that the original Statement of Financial Affairs knowingly
contains inaccurate information. Based on these fraudulent
actions, the Plaintiff claims that the discharge order should be
revoked under § 727(d)(1). The court observes that the Defendant's
guilty plea and the amendment to the Statement of Financial Affairs
occurred in 2019. Both events occurred two years after the entry
of the discharge order. The Plaintiff cannot use the plea agreement
or the Amended Statement of Financial Affairs for revocation
purposes because they do not fall within the one-year after entry
of discharge period. The Code expressly mandates the revocation
action must be brought within the year of the entry of discharge.
Plaintiff is barred from revoking the discharge by using events
that occurred two years after the entry of discharge. Although the
complaint was technically filed timely, the Plaintiff acquired
knowledge of the plea agreement and the Amended Statement of
Financial Affairs outside the statutory period required for a
revocation.

For a revocation of discharge for fraud to prosper under

1 section 727(d)(1) of the Bankruptcy Code, knowledge must be
2 acquired within one year after the entry of the discharge order.
3 Clearly, the Plaintiff knew of the fraud, prior to the granting of
4 discharge in 2016 and as a matter of fact, knew about the fraud
two years prior to the filing of the petition in 2012.

5 The Plaintiff fails to raise any new facts of fraud that
6 occurred between the entry of discharge order in 2016 and one year
7 thereafter in 2017. All the factual allegations for fraud stem
8 from the 2012 audit and the local court litigation, that occurred
9 two years before the filing of the bankruptcy case. These
10 underlying allegations of fraud resulted in a criminal conviction
11 and an Amended Statement of Financial Affairs in 2019, two years
after the entry of discharge. Therefore, the Plaintiff is prevented
from pursuing its revocation of discharge under § 727(d)(1).

12 B. Section 727(d)(2)

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14 The Plaintiff asserts that the discharge should also be
15 revoked under section 727(d)(2) of the Bankruptcy Code. This
16 section lists as a ground for revocation of a discharge that "the
17 debtor acquired property that is property of the estate or became
18 entitled to acquire property that would be property of the estate,
19 and knowingly and fraudulently failed to report the acquisition of
20 or entitlement to the property, or to deliver or surrender the
21 property to the trustee." 11 U.S.C. § 727(d)(2). The Plaintiff
22 claims that the Defendant acknowledged through his Plea Agreement
23 that, during years 2010, 2011 and 2012, the Defendant participated
24 in a conspiracy to enrich himself by not revealing income of
\$181,337.39 and the non-payment of taxes on personal expenses
charged to Option. It prompts the court to consider that the Debtor
amended his tax returns to reflect this fact. The Plaintiff also
alleges that the fact that the Defendant amended his Statement of
Financial Affairs to indicate an increase in income for the years

2010, 2011, 2012, as a result of the plea agreement, constitutes an acquisition of property of the estate. Quite to the contrary.

The court examined the Amended Statement of Financial Affairs and the amended tax returns; but it does not find anything in them to suggest that there is property acquired by the bankruptcy estate. Rather, the court is of the view that the amended tax returns are a result of overstated expenditures on the part of the Defendant and do not result in the acquisition of property available to the trustee for the benefit of the bankruptcy estate. The monies that the Defendant spent with the corporate American express were never available as "property of the estate" because they were expended by the Defendant long before the bankruptcy petition was filed in 2014. Given that there was no property to be hidden or delivered to the trustee, § 727(d)(2) does not apply to our set of facts and may not be a basis to revoke the discharge.

Even if the Plaintiff had identified a property that the Defendant failed to report, it already knew of the situation prior to the entry of the discharge order from the 2012 audit. As stated above, the Plaintiff had filed a belated objection to discharge, claiming the following in the allegations of the previous complaint:

1) "[u]pon information and belief, the defendant also failed to list all of his assets and or property of the estate in the schedules and amendments to the schedules filed in the Chapter 7 case which constitutes a ground for the denial of a discharge under section 727(a)(2) of the Bankruptcy Code." Adversary Proceeding No. 15-00181 at Docket No. 1, at 4, ¶6.

2) "[u]pon information and belief, even though the defendant has filed multiple amendments to his schedules and participated in 341 meetings, these are incomplete disclosures that do not conform with [section] 727(a)(3)

and (a) (5).” Id. at 7, ¶19.

3) “[o]mitting an asset from the debtor's schedules may be a “concealment” within the meaning of the discharge exception if it is both fraudulent and material.” Id. at 9, ¶28.

The prior complaint establishes that the Plaintiff knew about an alleged failure by the Defendant to set forth his assets or liabilities, years before the bankruptcy.

Several bankruptcy courts have held that under § 727(d) (2) a party's pre-discharge knowledge of a debtor's wrongdoing under this section will effectively estop that party from seeking revocation of the discharge. 6 Collier on Bankruptcy ¶ 727.17 (16th 2021) (citing Canfield v. Lyons, Jr. (In re Lyons, Jr.), 23 B.R. 123, 126 (Bankr. E.D. Va. 1982) (“The fact that subparagraphs 727(d) (2) and (d) (3) contain no language requiring the knowledge of any fraudulent conduct to be received after the discharge is granted, does not give the party in interest, who has the knowledge of the probable wrongdoing the privilege to wait until after a discharge is granted to ask the court to revoke the discharge.”)). The Debtor's duty under § 727(d) (2) is to report to the trustee any acquisitions of property after the filing of the petition. Id.

We have already ruled that the Plaintiff had pre-discharge knowledge of the Debtor's wrongdoing and as such it is barred from seeking the revocation of the discharge. Moreover, the Plaintiff's proffers defeat his plea for revocation, given that the property of the estate that it alleges that the Defendant acquired occurred prior to the filing of the bankruptcy petition. According to Collier on Bankruptcy, § 727(d) (2) appears to apply only to property acquired during the bankruptcy case. 6 Collier on Bankruptcy ¶ 727.17 (16th 2021). Other bankruptcy courts have similarly held that the revocation under § 727(d) (2) should be for post-petition conduct. Hurston v. Anzo (In re Anzo), 2017 Bankr. LEXIS 259 *10 (Bankr. N.D. Ga. Jan. 30, 2017) (“only post-petition

1 conduct in connection with the Debtor's bankruptcy case is relevant
2 and this Court finds that this applies to Section 727(d)(2), as
3 well"). See All Points Capital Corp. v. Stancil (In re Stancil),
4 2012 Bankr. LEXIS 4323 *6 (Bankr. E.D.N.C. Sept. 18, 2012) ("under
5 § 727(d)(2), a debtor's discharge may be revoked when a debtor
6 engages in certain types of fraud in connection with his own
7 bankruptcy case"). Hence, the revocation of discharge under
8 §727(d)(2) does not prevail. While we do not condone the
9 Defendant's pre-bankruptcy criminal conduct, the court is unable
10 to revoke the discharge under § 727(d)(1) or (d)(2).

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CONCLUSION

For the foregoing reasons, the Plaintiff's summary judgment is denied, and summary judgment is granted in favor of the Defendant.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 17th day of November, 2021.


Mildred Caban Flores
U.S. Bankruptcy Judge